

Message Text

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14

ACTION AEC-11

INFO OCT-01 EA-11 ISO-00 AECE-00 NAS-01 SCI-06 L-03 CPR-02

TRSE-00 NSF-04 ACDA-19 CIAE-00 INR-10 IO-14 NSAE-00

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FM AMEMBASSY TOKYO

TO SECSTATE WASDC PRIORITY 8462

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DEPT PASS ATOMIC ENERGY COMMISSION NATIONAL ACADEMY OF SCIENCES

EO 11652: NA

TAGS: TECH JA US

SUBJ: ABCC NEGOTIATIONS

REF: STATE 230187

1. EMBASSY APPRECIATES OPPORTUNITY TO REVIEW DRAFT ABCC AGREEMENT, GENERALLY CONCURS THAT DRAFT PROVIDES SATISFACTORY BASIS FOR PRESENTATION TO AND NEGOTIATION WITH JAPANESE. SPECIFIC EMBASSY COMMENTS FOLLOW. REFERENCES ARE TO CORRESPONDING ARTICLES AND SECTIONS OF DRAFT AGREEMENT.

2. ARTICLE III A (7) UNLESS THERE HAVE BEEN DIFFICULTIES OF WHICH WE UNAWARE, WE QUESTION NEED OR DESIRABILITY OF SPECIFIC AUTHORITY TO OBTAIN COPIES OF DEATH CERTIFICATES, SINCE INSTITUTE IS TO HAVE ALL POWERS NECESSARY TO CARRY OUT ITS OBJECTIVES.

ARTICLE III (B) EMBASSY CONCURS IN SEEKING IMMUNITY FROM ATTACHMENT AND EXECUTION IN FAVOR OF INSTITUTE BUT SERIOUSLY QUESTIONS EVEN PROPOSING SUCH IMMUNITY IN FAVOR OF PERSONNEL. IN FIRST PLACE, PROPOSAL AS WRITTEN WOULD SEEM TO CONFER IMMUNITY ON JAPANESE EMPLOYEES WORKING IN JAPAN. WE BELIEVE THIS TO BE IMPOSSIBLE UNDER JAPANESE LIMITED OFFICIAL USE

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OR ANY OTHER LEGAL SYSTEM, AND WE DO NOT BELIEVE IT WOULD

BE PROPER OR REASONABLE FOR USG TO PROPOSE SUCH IMMUNITY. SECONDLY, WE QUESTION NECESSITY OF COMPLICATING THESE NEGOTIATIONS BY REQUESTING FORM OF DIPLOMATIC IMMUNITY FOR U.S. EMPLOYEES OF THIS JAPANESE LEGAL ENTITY. WE DO NOT SEE HOW SUCH IMMUNITY CAN BE GRANTED UNDER JAPANESE LAW (IMMUNITY FOR DIPLOMATIC AND SOFA PERSONNEL IS CONFERRED BY STATUE AND TREATY), AND WE DO NOT SEE WHY SUCH IMMUNITY IS NECESSARY TO PROTECT AMERICAN EMPLOYEES. IF DAMAGE CAUSED "IN PERFORMANCE OF THEIR OFFICIAL DUTIES", SURELY THE INSTITUTE SHOULD PROTECT THEM FROM FINANCIAL REPERCUSSIONS OF SUIT. FINALLY, WE FEEL THAT CONFERRING SUCH IMMUNITY ON AMERICAN EMPLOYEES AND NOT ON JAPANESE EMPLOYEES WOULD CREATE INVIDIOUS DISTINCTIONS AMONG THE STAFF WHICH WE SHOULD ATTEMPT TO AVOID.

ARTICLE IV (F) THIS ARTICLE IS IN CONFLICT WITH ARTICLE VII (B) INsofar AS APPOINTMENT OF A DIRECTOR IS CONCERNED SINCE UNDER LATTER ARTICLE EXECUTIVE DIRECTOR COULD BE APPOINTED BY VOTE OF ONLY SIX, RATHER THAN SEVEN, GOVERNORS. IT IS ALSO UNCLEAR WHETHER SAME AFFIRMATIVE VOTE OF BOTH SIDES IS NECESSARY TO DISCHARGE, AS WELL AS APPOINT, AN EXECUTIVE DIRECTOR.

ARTICLE VII (B) AS OBSERVED IN EMBASSY'S PREVIOUS MESSAGE, JAPANESE PREFER ALTERNATING EXECUTIVE DIRECTORSHIP. WE HAVE NO OBJECTION TO PROPOSING ELECTORAL FORMULA OF THIS ARTICLE, SINCE IT WOULD PROVIDE EACH SIDE WITH VETO OVER REAPPOINTMENT OF DIRECTOR. HOWEVER, IT MAY LEAD TO GREATER CONFLICT THAN CLEAR-CUT UNDERSTANDING ON ALTERNATING DIRECTOR.

ARTICLE XII(B) WE ASSUME THAT THE INCOME TAX EXEMPTION FOR US CITIZENS PROPOSED IN THIS ARTICLE IS BASED ON ASSUMPTION THAT US EMPLOYEES WILL PAY US INCOME TAXES. WE UNDERSTAND, HOWEVER, THAT PERTINENT INCOME TAX PROVISIONS WOULD ALLOW US EMPLOYEES TO EXEMPT FIRST \$25,000 OF INCOME FROM INSTITUTE, SINCE IT WOULD BE FOREIGN SOURCE OF INCOME FOR NON-RESIDENT CITIZEN. FURTHER, US EMPLOYEES WOULD BE PROTECTED BY DOUBLE TAXATION TREATY BETWEEN US AND JAPAN. WE QUESTION, THEREFORE, WHETHER INCOME TAX PROVISION IS LIMITED OFFICIAL USE

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EITHER NECESSARY OR PROPER, AS IT WOULD BE, FOR EXAMPLE, IN CASE US EMPLOYEES WERE BEING PAID DIRECTLY BY USG.

ARTICLE XII WE BELIEVE EXPLICIT EXEMPTION FROM CUSTOMS DUTIES, AT LEAST INsofar AS US MANUFACTURED GOODS ARE CONCERNED, IS BOTH EQUITABLE AND EXTREMELY IMPORTANT. WHILE ARTICLE XII (A) MIGHT BE CONSTRUED AS ENCOMPASSING SUCH EXEMPTION, WE Ouwld PREFER NOT REPEAT NOT TO RELY ON SUCH

IMPLICATION.

ARTICLE XIII ACCESS TO US MILITARY FACILITIES IN JAPAN
IS GOVERNED BY STATUS OF FORCES AGREEMENT AND ACCESS TO
DIPLOMATIC FACILITIES IS GOVERNED BY DIPLOMATIC STATUS.
WE DO NOT BELIEVE THAT PROVISION IN AGREEMENT ESTABLISHING
INSTITUTE WOULD BE EFFECTIVE TO CONFER NECESSARY STATUS FOR ACCESS
TO EITHER TYPE OF FACILITIES. ALSO, AS IN COMMENT ABOVE ON
ARTICLE III (B) WE DO NOT BELIEVE THAT SUCH DISTINCTION SHOULD
BE MADE BETWEEN US AND JAPANESE EMPLOYEES.

3. EMBASSY STRONGLY URGES EARLY RESOLUTION OF THESE ISSUES
AND CLEARANCE OF REVISED TEXT FOR TRANSMITTAL TO GOJ. DELAY
IN TRANSMITTING TO GOJ US VIEWS ON THIS AGREEMENT COULD
PROVIDE GOJ EXCUSE FOR NOT REPEAT NOT FULFILLING FINNCIAL
EXPECTATIONS.

DECONTROL: 1/1/76.

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